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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Jasper Ian Webster,

10 Petitioner,

11 v.

12 David Shinn, et al.,

13 Respondents.

No. CV 22-08242-PCT-JAT (JZB)

14

15 **ORDER**

16 Petitioner Jasper Ian Webster, who is confined in the Arizona State Prison Complex-
17 Florence, has filed a pro se Petition for Writ of Habeas Corpus pursuant to 28 U.S.C.
18 § 2254 (Doc. 1). Petitioner did not pay the filing fee or file an Application to Proceed In
Forma Pauperis. The Court will dismiss the Petition without prejudice.

19 **I. Petition**

20 This is Petitioner's **second** petition for a writ of habeas corpus challenging his
21 conviction in Mohave County Superior Court, case #CR 2011-01290, for two counts of
22 sexual abuse, two counts of aggravated assault, five counts of sexual conduct with a minor,
23 one count of molestation of a child. On January 10, 2018, Petitioner filed his first petition
24 for a writ of habeas corpus regarding that conviction, *Webster v. Ryan*, 18-08003-PCT-
25 JAT. In a June 6, 2019 Order (Doc. 31 in 22-08003-PCT-JAT), the Court denied the
26 petition on the merits, and the Clerk of Court entered Judgment accordingly (Doc. 32 in
27 18-08003-PCT-JAT).

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1 Under 28 U.S.C. § 2244, a petitioner may not file a second or successive § 2254
 2 petition in this Court unless the petitioner has obtained certification from the Ninth Circuit
 3 Court of Appeals authorizing the Court to consider the second or successive § 2254
 4 petition. 28 U.S.C. § 2244(b)(3)(A). The current Petition is a “second or successive”
 5 petition because (1) the original petition was dismissed with an adjudication on the merits,
 6 (2) the current Petition challenges the same judgment as the initial petition, and (3) the
 7 facts underlying the claims in the current Petition accrued by the time of the initial petition.
 8 *Slack v. McDaniel*, 529 U.S. 473, 485-486 (2000); *Brown v. Muniz*, 889 F.3d 661, 667 (9th
 9 Cir. 2018). Because the current Petition is a second or successive petition and because
 10 Petitioner has not presented a certification order from the Ninth Circuit authorizing the
 11 Court to consider it, the Court will dismiss the current Petition and this action. The Court,
 12 however, will dismiss the case without prejudice so Petitioner can seek certification from
 13 the Ninth Circuit to file a second or successive § 2254 petition.¹

14 **IT IS ORDERED:**

15 (1) Petitioner’s Petition for Writ of Habeas Corpus (Doc. 1) and this action are
 16 **dismissed without prejudice**, and the Clerk of Court must **enter judgment** accordingly.

17 (2) The Clerk of Court must provide Petitioner with a copy of the form
 18 recommended by the Ninth Circuit Court of Appeals for filing an Application for Leave to
 19 File Second or Successive Petition Under 28 U.S.C. § 2254 or Motion Under 28 U.S.C.
 20 § 2255.

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25 ¹ In order to obtain certification from the Ninth Circuit, the Petitioner must
 26 demonstrate that the claim or claims “relies on a new rule of constitutional law, made
 27 retroactive to cases on collateral review by the Supreme Court,” or that “the factual
 28 predicate for the claim could not have been discovered previously through the exercise of
 due diligence” and “the facts underlying the claim . . . would be sufficient to establish by
 clear and convincing evidence that, but for constitutional error, no reasonable fact finder
 would have found the applicant guilty of the underlying offense.” 28 U.S.C. § 2244(b)(2).

5 Dated this 20th day of January, 2023.


James A. Teilborg
Senior United States District Judge

**Form 12. Application for Leave to File Second or Successive Petition Under
28 U.S.C. § 2254 or Motion Under 28 U.S.C. § 2255**

(New, 7/1/02; Rev. 7/1/16)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
P.O. Box 193939
San Francisco, California 94119-3939

Docket Number (to be provided by Court) _____

Applicant Name _____

Prisoner Registration Number _____

Address _____

Name of Respondent (Warden) _____

Instructions - Read Carefully

- (1) This application, whether handwritten or typewritten, must be legible and signed by the applicant under penalty of perjury. An original must be provided to the Clerk of the Ninth Circuit. The application must comply with 9th Circuit Rule 22-3, which is attached to this form.
- (2) All questions must be answered concisely. Add separate sheets if necessary.
- (3) If this is a capital case, the applicant shall serve a copy of this application and any attachments on respondent and must complete and file the proof of service that accompanies this form. If this is not a capital case, service on the respondent is not required.
- (4) The proposed 28 U.S.C. § 2254 petition or 28 U.S.C. § 2255 motion that applicant seeks to file in the district court must be included with this form.
- (5) Applicants seeking authorization to file a second or successive section 2254 habeas corpus petition shall include copies of all relevant state court decisions if reasonably available.

You Must Answer the Following Questions:

- (1) What conviction(s) are you challenging?

- (2) In what court(s) were you convicted of these crime(s)?

(3) What was the date of each of your conviction(s) and what is the length of each sentence?

For questions (4) through (10), provide information separately for each of your previous §§ 2254 or 2255 proceedings. Use additional pages if necessary.

(4) Has the judgment of your conviction or sentence been modified or amended? If yes, when and by what court?

(5) With respect to **each** conviction and sentence, have you ever filed a petition or motion for habeas corpus relief in federal court under **28 U.S.C. § 2254 or § 2255**?

Yes No

(a) In which federal district court did you file a petition or motion?

(b) What was the docket number?

(c) On what date did you file the petition/motion?

(6) What grounds were raised in your previous habeas proceeding?

(list all grounds and issues previously raised in that petition/ motion)

(7) Did the district court hold an evidentiary hearing? Yes No

(8) How did the district court rule on your petition/motion?

District court **dismissed** petition/motion? If yes, on what grounds?

District court **denied** petition/motion;

District court **granted** relief; if yes, on what claims and what was the relief?

(9) On what date did the district court decide your petition/motion?

(10) Did you file an appeal from that disposition? Yes No

(a) What was the docket number of your appeal?

(b) How did the court of appeals decide your appeal?

(11) State concisely each and every ground or issue you wish to raise in your current petition or motion for habeas relief. Summarize briefly the facts supporting each ground or issue.

(12) For each ground raised, was it raised in the state courts? If so, what did the state courts rule and when?
(Attach a copy of all relevant state court decisions, if available)

(13) For each ground/issue raised, was this claim raised in any prior federal petition/motion?
(list each ground separately)

(14) For each ground/issue raised, does this claim rely on a new rule of constitutional law?
(list each ground separately and give case name and citation for each new rule of law)

(15) For each ground/issue raised, does this claim rely on newly discovered evidence? What is the evidence and when did you discover it? Why has this newly discovered evidence not been previously available to you?
(list each ground separately)

(16) For each ground/issue raised, does the newly discovered evidence establish your innocence?
How?

(17) For each ground/issue raised, does the newly discovered evidence establish a federal constitutional error? Which provision of the Constitution was violated and how?

(18) Provide any other basis for your application not previously stated.

Date: _____ Signature: _____

In capital cases only, proof of service on respondent MUST be attached. A sample proof of service is attached to this form.

Attach proposed section 2254 petition or section 2255 motion to this application.